

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**D.H., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Duluth, GA, Employer**

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**Docket No. 13-489  
Issued: July 9, 2013**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On December 18, 2012 appellant filed a timely appeal of a June 21, 2012 nonmerit decision of the Office of Workers' Compensation Programs denying her reconsideration request. Because over 180 days elapsed from the most recent merit decision dated March 29, 2012 to the filing of this appeal, the Board lacks jurisdiction to review the merits of appellant's case pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3.

**ISSUE**

The issue is whether OWCP properly denied appellant's request for reconsideration on the merits pursuant to 5 U.S.C. § 8128(a).

**FACTUAL HISTORY**

This case has previously been before the Board. On December 7, 2008 appellant, then 50-year-old clerk, injured her hand, knee and back when she tripped and fell in the performance of duty. OWCP accepted her claim for right wrist sprain, contusion of the left knee and lumbar

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

sprain on June 17, 2009. By decision dated December 29, 2009, it denied appellant's claim for intermittent periods of disability from September 1 through October 13, 2009 finding that she failed to submit supportive medical evidence. In an October 5, 2010 decision,<sup>2</sup> the Board found the medical evidence insufficient to establish that her current back condition and any resulting period of disability was due to her accepted employment injury. The facts and circumstances of the case as set out in the Board's prior decision are incorporated herein by reference.

Following the Board's decision, appellant submitted a report dated September 16, 2010 by Dr. Plas T. James, a Board-certified orthopedic surgeon, who noted that appellant sat in a chair that was too low and developed severe back pain. Dr. James diagnosed L4-5 and L5-S1 grade 1 spondylolisthesis and degenerative disc disease with instability in the axial plane. Appellant filed a claim for compensation requesting wage-loss compensation from December 3 through 16, 2010.

In a letter dated January 13, 2011, OWCP noted that specific hours of appellant's limited duty had been withdrawn effective December 3, 2012 due the National Reassessment Process (NRP). It requested additional medical evidence in support of her claim.

Appellant filed a second claim for compensation for the period January 1 through 14, 2011.

In a decision dated February 14, 2011, OWCP denied appellant's claim for compensation for the period December 3 to 14, 2010. Appellant requested an oral hearing before an OWCP hearing representative on February 28, 2011.

In a report dated January 28, 2011, Dr. Robert L. Howell, a Board-certified surgeon, reviewed appellant's history of a fall on July 12, 2008 and diagnosed hyperextension of her right wrist. He noted that Dr. Stephen McCollam, a Board-certified orthopedic and hand surgeon, diagnosed degenerative arthritis of the right wrist not related to the employment injury. Dr. Howell stated that he now believed that appellant had degenerative arthritis, which was asymptomatic and "It may have been the fall indeed exacerbated the problem and she remains symptomatic after the exacerbation at this time." He noted that appellant did not have a traumatic rupture of the scapholunate ligament, but had developed a degenerative pattern of wrist osteoarthritis.

Appellant filed claims for compensation for the periods January 29 through February 11, 2011 and February 12 through 23, 2011.

By decision dated March 18, 2011, OWCP denied appellant's claim for compensation for the period January 1 through 14, 2011.

Appellant filed a claim for compensation for the period February 26 through March 11, 2011.

By decision dated April 14, 2011, OWCP denied appellant's claim for compensation for the period January 15 through February 25, 2011, as the medical evidence was not sufficient to establish that her disability was due to her accepted December 7, 2008 employment injury.

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<sup>2</sup> Docket No. 10-800 (issued October 5, 2010).

Appellant testified at the oral hearing on June 10, 2011. Following the hearing, she submitted a report dated June 17, 2011 from Dr. Obinwanne FC Ugwonali, a Board-certified orthopedic surgeon, who addressed her right wrist pain. Dr. Ugwonali diagnosed chronic right wrist arthritis, scapholunate ligament tear likely aggravated by appellant's fall at work on December 7, 2008. In a note dated April 20, 2011, Dr. James stated that she had spondylolisthesis and was able to work with restrictions of lifting up to 20 pounds. On August 18, 2011 he repeated his diagnosis of L4-5 and L5-S1 grade 1 spondylolisthesis and degenerative disc disease.

The hearing representative issued a decision on September 22, 2011 finding that appellant had not established that she was entitled to compensation for the period December 3 through 14, 2010.

Appellant requested reconsideration on November 15, 2011 and submitted additional medical evidence. On October 24, 2011 Dr. James stated that she attributed her back pain to her December 7, 2008 fall. He noted appellant's 20-pound lifting restriction and stated that while at work she sat in a chair that was too low and developed increasing back pain. Dr. James noted that she had not worked since December 1, 2010 due to her restrictions. He stated that appellant's back pain was aggravated by her fall on December 7, 2008, but that she had a preexisting degenerative process. Dr. James again examined appellant on November 3, 2011 and February 2, 2012.

In a report dated October 4, 2010, Dr. Howell noted appellant's history of a fall and landing on an outstretched hand. He diagnosed scapholunate ligament tear and stated that it was extremely difficult to know whether the condition was caused by the December 7, 2008 fall. Dr. Howell stated that the fall either caused or significantly exacerbated her scapholunate ligament tear and was the cause of her current complaints. On May 10, 2011 he diagnosed degenerative arthritis of the right and left wrists. Dr. Howell stated that appellant had a lifting restriction of 10 pounds. He opined that her condition was not work related, but that she could not lift up to 70 pounds.

Appellant underwent a functional capacity evaluation on December 16, 2011 which indicated that she could perform sedentary work within acceptable validity test parameters. On March 15, 2012 she requested reconsideration of the February 14, March 18 and April 14, 2011 decisions.

In March 29, 2012 decisions, OWCP reviewed the merits of appellant's claim and denied modification of the February 14, March 18 and April 14, 2011 decisions.

On March 29, 2012 appellant requested reconsideration of the March 29, 2012 decisions. By letter dated April 6, 2012 entitled Appeal Decision, she disagreed with the handling of her claims and referenced Dr. James' April 20, 2011 report, Dr. Howell's November 24, 2010 report and test results. Appellant resubmitted Dr. Ugwonali's June 17, 2011 report, Dr. James' April 20, 2011 note and the December 16, 2011 functional capacity evaluation. She also submitted a narrative statement.

By decisions dated April 20, 2012, OWCP declined to reopen appellant's claim for consideration of the merits of her claim for compensation for the period December 2 through 14,

2010 and January 1 through February 25, 2011. It found that she failed to submit any relevant and pertinent new evidence.

On May 21, 2012 appellant requested reconsideration and asked that OWCP thoroughly review her medical evidence. She submitted a report dated May 3, 2012 from Dr. James diagnosing spondylolisthesis and degenerative disc disease.

By decision dated June 21, 2012, OWCP declined to reopen appellant's claims for reconsideration of the merits. It stated that Dr. James' report was not new and relevant evidence and that her narrative statements were not relevant.

### **LEGAL PRECEDENT**

FECA provides in section 8128(a) that OWCP may review an award for or against payment of compensation at any time on its own motion or on application by the claimant.<sup>3</sup> Section 10.606(b) of Title 20 of the Code of Federal Regulations provide that a claimant may obtain review of the merits of the claim by submitting in writing an application for reconsideration which sets forth arguments or evidence and shows that OWCP erroneously applied or interpreted a specific point of law; or advances a relevant legal argument not previously considered by OWCP; or includes relevant and pertinent new evidence not previously considered by OWCP.<sup>4</sup> Section 10.608 of OWCP's regulations provide that, when a request for reconsideration is timely, but does meet at least one of these three requirements, OWCP will deny the application for review without reopening the case for a review on the merits.<sup>5</sup>

The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case. The Board has also held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case. While the reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.<sup>6</sup>

### **ANALYSIS**

Appellant filed claims for compensation requesting wage-loss benefits beginning December 3, 2010 due to her disability as a result of the 2008 employment injury and the NRP. The last merit decisions in this case were issued on March 29, 2012 more than 180 days prior to her appeal to the Board on December 18, 2012. The Board only has jurisdiction to review the June 21, 2012 decision declining to reopen appellant's for consideration of the merits.

The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(3) requiring OWCP to reopen the case of review of the merits of her claim. In her May 21, 2012 request for reconsideration, appellant did not identify or show that OWCP

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<sup>3</sup> 5 U.S.C. §§ 8101-8193, 8128(a).

<sup>4</sup> 20 C.F.R. § 10.606.

<sup>5</sup> *Id.* at § 10.608.

<sup>6</sup> *M.E.*, 58 ECAB 694 (2007).

erroneously applied or interpreted a specific point of law. She did not advance a new and relevant legal argument not previously considered by OWCP.

A claimant may be entitled to a merit review by submitting pertinent new and relevant evidence, not previously considered by OWCP, but appellant did not meet this requirement of 20 C.F.R. § 10.606(b)(3) as she submitted a report from Dr. James, which was duplicative of his previous reports and did not provide any additional new evidence regarding her periods of disability. As noted above, medical reports which are repetitive are not sufficient to require OWCP to reopen her claim for further consideration of the merits.

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

### **CONCLUSION**

The Board finds that as appellant has not met any of the criteria to warrant further consideration of the merits of her claim, OWCP properly declined to reopen her claim for consideration of the merits.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the June 21, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 9, 2013  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board